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14 GOOGLE INC.

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 ORACLE AMERICA, INC.,  
19 Plaintiff,  
20 v.  
21 GOOGLE INC.,  
22 Defendant.

Case No. 3:10-cv-03561 WHA

**GOOGLE'S REPLY IN SUPPORT OF  
MOTION FOR RULE 50(b) JUDGMENT  
AS A MATTER OF LAW ON PORTIONS  
OF COUNT VIII OF ORACLE'S  
AMENDED COMPLAINT, OR, IN THE  
ALTERNATIVE, FOR A NEW TRIAL**

Date: August 23, 2012  
Time: 8:00 a.m.  
Dept.: Courtroom 8, 19<sup>th</sup> Floor  
Judge: Hon. William Alsup

1           **I. INTRODUCTION**

2           The Court should grant Google's motion for Rule 50(b) judgment as a matter of law  
 3 ("JMOL"), or in the alternative, for a new trial (Dkt. 1222). None of the arguments Oracle raises  
 4 in its Opposition (Dkt. 1227) adds to the parties' prior briefing on these issues or compels a  
 5 different conclusion.

6           **II. ARGUMENT**

7           **A. The J2SE platform is the "work as a whole."**

8           The J2SE platform is the work Oracle registered with the Copyright Office and the  
 9 copyright in the J2SE platform is the copyright that Oracle accused Google of infringing in this  
 10 case. Dkt. 36, Ex. H; *see also* TX 464 and 475. As a matter of law, the registered work is the  
 11 "work as a whole." Moreover, Oracle presented no evidence at trial that "[e]ach source code file  
 12 in the Java platform" is "recognizable as a self-contained work." Dkt. 1227 at 3:1-2. Thus, even  
 13 if it were possible to subdivide a registered work, there is no basis in the record to subdivide the  
 14 J2SE platform file-by-file into separate "works."

15           For all the reasons stated in Google's JMOL motion and its prior copyright briefs, (Dkt.  
 16 955 at 5:2-12:2, Dkt. 984 at 5:1-10, Dkt. 993 at 3:9-6:5, and Dkt. 1043 at n. 9), which are  
 17 incorporated herein by reference, the complete J2SE platform is the "work as a whole" for the  
 18 infringement analysis.

19           **B. The rangeCheck function and the "decompiled files" are *de minimis* as a  
 20 matter of law.**

21           The rangeCheck function is *de minimis* as a matter of law when compared either to the  
 22 millions of lines of code in the J2SE platform or to the 3,179 lines of code in the Arrays.java file.<sup>1</sup>  
 23 Oracle's reliance on Dr. Mitchell's testimony that rangeCheck is "useful" to the library in which  
 24 it is located and that the rangeCheck code "has some subtlety" is insufficient to establish  
 25 quantitative or qualitative significance. *See Newton v. Diamond*, 388 F.3d 1189, 1195-97 (9th

26  
 27           <sup>1</sup> As explained in Section II.A., above, rangeCheck and the "decompiled files" should be  
 28 compared to the J2SE platform as a whole to determine whether any copying was *de minimis*.

1 Cir. 2004). Further, Oracle presented no evidence at trial that a computer programmer or  
2 application developer would “recognize Google’s copying of rangeCheck.” Dkt. 1227 at 6:9.

3 The “decompiled files” are also *de minimis* as a matter of law. The files are a tiny fraction  
4 of the code in the J2SE platform, and there is no evidence that they are qualitatively significant.

5 Therefore, for all the reasons stated in Google’s JMOL motion and prior copyright briefs  
6 (Dkt. 955, 984, 993, 1007, and 1043), which are incorporated herein by reference, Google’s  
7 JMOL motion should be granted.

8 **III. CONCLUSION**

9 For the foregoing reasons, Google’s motion for Rule 50(b) judgment as a matter of law,  
10 or, in the alternative, for a new trial should be granted.

11 Dated: August 7, 2012

KEKER & VAN NEST LLP

12 By: /s/ Robert A. Van Nest  
13 ROBERT A. VAN NEST

14 Attorneys for Defendant  
15 GOOGLE INC.